S.B. CIVIL WRIT PETITION NO.7006/2007

Panch Ratan Construction Company Private Limited.

vs.

Addl. District Judge (FT) No.5, Udaipur and ors.

Date : 1.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.V Balia, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner/plaintiff is aggrieved by the order dated 28.9.2007 by which the court below rejected the petitioner's two applications, one under Order 6 Rule 16 CPC and another under Order 14 Rule 5 CPC were dismissed.

According to learned counsel for the petitioner/plaintiff, the newly added respondent, who purchased the property in dispute during pendency of the suit, could not have taken a stand which was not taken by the original defendant. It is submitted that the defendants are the legal heirs of the vendor. The legal heirs of the vendor did not take the plea that the plaintiff was not

ready and willing to perform his part of the contract. Since the property was transferred during pendency of the suit, therefore, only subsequent purchasers were impleaded in the suit. Therefore, the subsequent purchaser cannot take the plea which was not taken by the original vendor or his legal heirs. In view of the above reason, according to the plaintiff, there was an admission of the original defendant in view of the fact that the fact pleaded by the plaintiff was not denied specifically. In that situation there was no necessity of framing of an issue about the readiness and willingness on the part of the plaintiff to perform his part of the contract.

I considered the submissions of learned counsel for the petitioner and after going through the reasons given by the court below, I do not find that the court below has committed any error of jurisdiction.

It is further relevant to mention here that if the trial court found that the pleadings are not scandalous or will embarrass the proceedings, I do not find any error in the same. Otherwise also, in a suit for specific performance of contract, it was for the plaintiff to prove that he was ready and willing to perform his part of the court.

However, it may have exception where the defendant may have denied the agreement for sale etc. and in certain circumstances, he may not take the plea of objection of the plaintiff being not ready and willing to perform his part of the contract but that depends on the facts of each case and that fact can also be looked into by the trial court. The issue which was framed by the trial court was also framed according to the pleadings of the parties and no prejudice can be caused to the plaintiff because of the nature of the suit.

In view of the above, this writ petition having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya